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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/075,857   | 02/14/2002  | Kenneth Fred Bailey  | 4148.4              | 9430             |
| 21176  | 7590        | 05/03/2006           | EXAMINER            |                  |
| SUMMA, ALLAN & ADDITON, P.A.<br>11610 NORTH COMMUNITY HOUSE ROAD<br>SUITE 200<br>CHARLOTTE, NC 28277 |             |                      | FOX, CHARLES A      |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3652                |                  |

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/075,857             | BAILEY ET AL.       |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Charles A. Fox         | 3652                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 18 May 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-75 is/are pending in the application.
- 4a) Of the above claim(s) 3-7,9-12,18-22,29,30,33-35 and 41-75 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,8,13-17,23,28,31,32 and 36-40 is/are rejected.
- 7) Claim(s) 24-27 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 18 May 2005 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

This application has been reassigned to examiner Charles A. Fox.

***Election/Restrictions***

The restriction requirement was made final in the previous office action and is correct. Applicant has failed show that the species set forth are not patentably distinct. As such applicant's response regarding the restriction is moot and not open for further discussion. If applicant wishes further review of the restriction, the proper avenue is to petition.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,13,31 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Buck. Regarding claim 1 Buck US 750,241 discloses a chip diffuser for distributing particulate material comprising:

a central shaft stem (C);

a rotor assembly comprising:

a hub (D);

at least two vane mounting rods (F) mounted to said hub in a non-radial direction;

substantially planer vanes (f) mounted to said rods at an angled pitch.

Regarding claim 2 Buck also discloses that said rotor assembly is rotatably mounted atop said central shaft stem.

Regarding claim 13 Buck further disclose that the vanes and rods are attached in a one to one relationship.

Regarding claims 31 and 32 Buck also discloses a toe bar (f) attached to each vane from its top to its bottom at an end thereof.

Claims 1,8,14-17,23 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Wigram. Regarding claim 1 Wigram US 4,555,210 discloses a diffusion device comprising:

a central shaft (3);

a hub (5) mounted on said shaft;

at least two rods (6b) mounted on said hub in a non radial orientation;

vanes (7) mounted on said rods.

Regarding claim 8 Wigram also discloses six rods mounted to their hub wherein said rods are spaced uniformly about the axis defined by said central shaft.

Regarding claims 14-17 Wigram further discloses that the vanes are generally rectangular in shape and can be rotated 360 degrees about fastener (7b).

Regarding claim 23 Wigram further teaches that the vanes are operable to be placed at various angles relative to vertical such that the speed of the device would be governed by the angle of the individual vanes.

Regarding claim 38 Wigram also discloses using the kinetic energy of the particulate stream to rotate his device.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wigram as applied to claim 1 above, and further in view of Donelson, Jr. Wigram teaches the limitations of claim 1 as above, he does not teach collection bars on the vanes. Donelson, Jr. US 3,248,117 teaches a particulate material spreader comprising:

a pair of vanes (28,30);

a collection bar (116) mounted on each of said vanes. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Wigram with collection bars as taught by Donelson, Jr. in order to help in maintaining the flow of particulate material on the vane.

Claims 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wigram as applied to claim 1 above, and further in view of Cobb. Wigram teaches the limitations of claim 1 as above, he further teaches a vane plate (6a) connected to each vane. Wigram does not teach a stream divider positioned over their device. Cobb US 4,272,028 teaches a particulate material distributor comprising:

a center stem (12);

a diffuser (2) with a plurality of vanes attached thereto;  
an upper section (1) for receiving a stream of particulate material;  
said upper section divided by three elements (11) such that a stream flowing into said upper section may be divided. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Wigram with a flow divider as taught by Cobb in order to direct the stream of material onto the diffuser in a controlled manner.

Regarding claims 39 and 40 the amount of material the device can handle is considered an obvious design choice. The instant invention is designed to work with an existing conveyor that provides the stream of material. Applicant further discloses that scaling of the diffuser will yield a higher rate of distribution of the material. As the rate is dependent upon the supplying conveyor it would have been obvious to one of ordinary skill in the art, at the time of invention to scale the device to disperse a stream of material at the same rate that the material is being supplied to the device.

#### ***Allowable Subject Matter***

Claims 24 -27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 24,26 and 27 have the limitation of the governor means being mounted on the back side of the vanes, this is not taught or suggested by the closest prior art of Wigram.

#### ***Response to Arguments***

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Applicant's arguments filed May 18, 2005 have been fully considered but they are not persuasive. Regarding the rejections under the Buck reference the applicant is arguing limitations that are not found in the claims. Any angle of the vanes and the rods satisfies the claim as written. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., angles relative to a vertical axis) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). As such any arguments must be directed towards the claims as written and not the disclosure.

Regarding arguments against the Wigram reference not teaching the limitations of claim1 the examiner disagrees. However a more detailed explanation of the Wigram has been set forth above.

Applicant's arguments filed May 18, 2005, with respect to 35 U.S.C. 112 rejections have been fully considered and are persuasive. The 35 U.S.C. 112 rejections of claims 7,10 and 15-17 have been withdrawn.

Applicant's arguments with respect to claims 36,37,39 and 40 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 571-272-6923. The examiner can normally be reached on 7:00-4:00 Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



EILEEN D. LILLIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

CAF  
C&P  
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